

Attachment # 6
Page 1 of 4

Board of County Commissioners
Agenda Request

Date of Meeting: November 8, 2005

Date Submitted: November 2, 2005

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator
Vincent Long, Assistant County Administrator
Benjamin H. Pingree, Assistant to the County Administrator

Subject: Approval of Partnership Agreement for Construction and Ownership of Building at Innovation Park for "Project North" Corporate Relocation.

Statement of Issue:

This agenda item requests Board approval of an "Agreement Among Tenants in Common" (Agreement) with the City of Tallahassee and Leon County Research and Development Authority (LCRDA) for the ownership of a building at Innovation Park to house the relocated corporate facilities of Danfoss Turbocor Compressors, Inc. (the Company) to Leon County (Attachment #1) with related approval of a budget amendment request for related direct incentives (Attachment #2).

Background:

During their regular meeting on June 28, 2005, the Board accepted a report from the EDC regarding a proposed corporate relocation proposal for a Canadian-based research and manufacturing company and directed staff to negotiate up to \$1.605 million in County direct incentives. On October 25, 2005, the Board approved a Memorandum of Understanding (MOU) with the Company, the City and the LCRDA. The MOU outlined how the approximately \$7 million in overall incentives (including \$1.605 million in new direct or "cash" County incentives) would be offered to the Company in return for their corporate relocation to Leon County, with the related creation of over 150 high-paying, targeted jobs within the next three years (Attachment #3).

As the approved MOU directed \$813,500 of the County's total direct incentives toward construction of a new corporate headquarters and manufacturing facility at Innovation Park, staff has worked with Innovation Park and the City to create an interlocal "Tenants in Common" agreement. Significantly, the proposed Agreement further codifies the ownership arrangement of the proposed building as well as the general structure for its future lease to the Company. The Analysis Section, below, provides the Board with an overview of the terms of the proposed Agreement and requests Board approval of the Agreement at this time. Also presented is a request by the EDC for the County to advance their portion of funding for the building's construction, in the full amount of \$813,500 (Attachment #4).

Analysis:

The Agreement is intended to further codify the arrangement between the County, City and LCRDA for the construction and ownership of a proposed building for the Company's corporate relocation to Leon County. According to the Agreement, the partners will join to construct a building at

Agenda Request: Approval of Partnership Agreement for Construction and Ownership of
Building at Innovation Park for "Project North" Corporate Relocation.
November 8, 2005
Page 2

Innovation Park that will be owned by the County (25%), the City (25%) and the LCRDA (50%). As also outlined in the MOU, the County and the City will each provide \$813,500 toward the building's estimated \$5 million total construction cost. The LCRDA will provide \$450,000 in cash and will donate over 10 acres of land estimated at nearly \$1.2 million. As outlined in the attached Cost projection table, the remaining \$3 million required to construct this facility, totaling approximately 65,000 square feet, will be financed by the LCRDA (Attachment #5).

The intent is for the building to be subleased to the Company for a period of up to twenty years, with an option to buy the building. The sublease is currently being negotiated between the LCRDA and the Company. Per the Agreement, the Company will be required to, at a minimum, cover the debt service payments, taxes, maintenance and related operational expenses of the building. However, it is anticipated that the terms of the sublease to the Company will be very favorable, with an initial lease rate of less than \$4 per square foot (the market rate is estimated at over \$8 per square foot).

The risks for owning the building will be shared by the County, City and LCRDA based upon their share of ownership. For example, should the Company's relocation effort fail, or should the Company vacate the building, each owner would be required to cover their portion of the total debt service payment (estimated at \$230,100, annually) while a new tenant is located or the building is sold. Similarly, should lease revenues for the building escalate above building costs, any remaining fund balance from the building "cash flow" would be split amongst the owners in a like fashion.

Included in the Agreement are also limitations of liability that preclude each member from selling their ownership stake or making any physical changes to the facility without the consent of each owner. The LCRDA will be required to construct, lease and provide administrative oversight to the building. Accordingly, the LCRDA will maintain appropriate financial documentation related to the facility to be available for inspection by the County or City at any time. A dispute resolution process has also been incorporated into the Agreement to rectify any unknown future issues that might arise between the County, City and LCRDA as the "owners" of the building.

At this time, staff is recommending Board approval of the proposed Agreement between the County, City and LCRDA (Option #1, on Page #4). As Section 1.01 of the Agreement provides that the terms of the sublease must be accepted by each of the partners, including the County, staff is also recommending that the Board authorize the County Administrator to make the determination of "acceptability" (Option #2, on Page #4). Significantly, the Agreement is also expected to be approved by the City Commission during their regular meeting on November 9, 2005.

Upon Board approval, staff will continue to coordinate with the LCRDA, City, EDC and Company to expedite the corporate relocation. The LCRDA has completed an RFP process and has selected Sperry and Associates to construct the building. The LCRDA is awaiting approval of a sublease agreement with the Company before executing a construction contract for the building. However, the Company has expressed their desire to be fully relocated and into production by June 2006, necessitating a very aggressive construction schedule, to begin as soon as possible (Attachment #6).

Agenda Request: Approval of Partnership Agreement for Construction and Ownership of Building at Innovation Park for "Project North" Corporate Relocation.
November 8, 2005
Page 3

EDC Request to Advance Fund Building Construction:

On November 3, 2005, The Chairman received a letter from Ed Murray, Past Chairman of the Economic Development Council. In that letter, the EDC requested two concessions from the County, City and LCRDA, as follows (Attachment #3):

- Immediately release County funds (\$813,500) committed for building construction, and
- Accept Danfoss Turbocor Compressors, Inc. as the entity to both sign the building lease and (significantly) provide the guarantee for the lease.

The EDC's request differs from both the MOU and key points that have previously been agreed upon during the relocation negotiation process. For example, Section 3.04 of the MOU states that "the County commits \$813,500 toward the construction of buildings **leased to the Company** (emphasis added)." The MOU outlined the County's intent to only release their direct or cash incentives upon the Company's signature of all agreements, *including* the sublease agreement. Additionally, the Company's parent company, Danfoss, had previously agreed to guarantee the sublease agreement for the building and had submitted a set of financial statements to the LCRDA for bank review. As a larger company, with higher revenues and a more established history, Danfoss would serve as a more "secure" guarantor for the building's construction and sublease to a prospective lender.

Although Board ascension to the EDC's request would certainly expedite the construction of a new building in Innovation Park, staff has a number of concerns with this request. First, the Board has already taken extraordinary measures to provide cash incentives for this corporate relocation, including earmarking nearly \$1 million toward the construction of a building for sublease to the Company. Releasing the funds and beginning the construction process without a signed sublease in place results in the essential construction of a speculative building for economic development purposes. As noted in the EDC's request letter, "the consequences of this (action) would be that the community has a speculative building." Such an action at this time would also likely serve to reduce the County, City and LCRDA's bargaining position, as the sublease negotiations continue toward closure with the Company. Staff contends that any process by the Board to create a speculative building space, including for creation of a potential business incubator, should occur in a more deliberate manner with added considerations for building location, size, composition and cost.

Acceptance of the EDC's second request may also have a negative impact on the LCRDA's ability to finance the remaining (estimated) \$3 million necessary to construct the building. Previously the Company's parent company, Danfoss, had agreed to serve as guarantor of the building's sublease. As such, they had submitted their financial documents to the LCRDA for "shopping" to regional banks to secure financing for this building's construction. As a more established company, Danfoss' financial documents are likely more attractive to lenders than those of the newer Danfoss Turbocor Compressors, Inc. (the Company).

At the time of this writing, LCRDA staff reports that Danfoss Turbocor Compressors, Inc. has not yet forwarded their financial documents for review with local lenders. As such, staff is concerned that allowing only the Company to sign and "guarantee" the sublease might impede the lender

Agenda Request: Approval of Partnership Agreement for Construction and Ownership of Building at Innovation Park for "Project North" Corporate Relocation.
November 8, 2005
Page 4

approval process for the construction loan (as compared to if Danfoss provided the guarantee for the building lease). However, if the LCRDA is able to secure comparable financing for the construction of the building using only the Company's guarantee (not Danfoss'), staff would have no objections to allowing that modification, as requested by the EDC.

It is expected that a proposed sublease agreement will be completed by the LCRDA, "approved" by the County and City, and forwarded to the Company for their consideration and approval during this week. Once the sublease is executed by the Company, and in accordance with the intent of the MOU, the County could release the \$813,500 for building construction. As such, staff is also recommending that the Board take the following actions (Option #3, below):

- Approve the attached Budget Amendment Request (BAR) and Resolution appropriating \$1.605 Million in direct incentives for the Company's corporate relocation (Attachment #2).
- Authorize the County Administrator to release direct incentive funds from the newly established account in accordance with the terms and conditions of the Board approved Memorandum of Understanding and Agreement Amongst Tenants In Common.
- Authorize the County Administrator to release the County's \$813,500 incentive toward building construction upon execution of a sublease with the Company and related lender approval of LCRDA financing for the building's remaining cost for construction.

Significantly, staff expects that both a) the Company will have forwarded all required financial documents for review and b) the LCRDA will have secured financing for construction by the time the sublease is executed. Based upon the Company's response to the sublease proposal, the sublease agreement could be executed within the upcoming week, thus triggering building construction.

Options:

1. Approve the Agreement Among Tenants in Common between the County, City and Leon County Research and Development Authority.
2. Authorize the County Administrator to determine the "acceptability" of the sublease between the "Tenants In Common" and the Company, on behalf of the County.
3. Approve the attached BAR and Resolution appropriating \$1,605,000 in total incentives and Authorize the County Administrator to release those direct incentive funds in accordance with related Board approved agreements, to include the release of a \$813,500 incentive for building construction upon a) the execution of a sublease with the Company and b) related lender approval of financing for any remaining building construction costs.
4. Do not approve the Agreement or the associated Budget Amendment Request form.
5. Board direction.

Recommendation:

Options #1, #2 and #3.